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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 726

NATHAN MAYO AND ROY HUTCHINSON,
Appellants,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

STATEMENT AS TO JURISDICTION.

J. TOM WATSON,
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Assistant Attorneys General of Florida,
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THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

STATEMENT AS TO JURISDICTION.

Come now Nathan Mayo and Roy Hutchinson, defendants in the above entitled cause, and, in compliance with Rule 12 of the Rules of the Supreme Court of the United States as amended, present this their separate typewritten statements particularly disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction on appeal to review the decree of October 26, 1942, in this case from which the appeal herein is taken, as follows:

FIRST.

Basis Upon Which Is Is Contended That Supreme Court Has Jurisdiction.

The jurisdiction of the Supreme Court of the United States to review the decree of October 26, 1942, in this case

from which the appeal herein is taken, is conferred by Sections 238 and 266 of the Judicial Code of the United States, which sections provide that an appeal may be taken directly to the Supreme Court of the United States from orders, judgments or decrees granting or denying interlocutory or permanent injunctions suspending or restraining the action of any officer of any state in the enforcement or execution of any statute of such state, or in the enforcement or execution of any order made by any administrative board or commission acting under or pursuant to any such statute. The defendant, Nathan Mayo, who is the Commissioner of Agriculture of the State of Florida, and the defendant, Roy Hutchinson, who is an inspector in the Bureau of Inspections of the State of Florida acting under the direction and control of the said defendant Nathan Mayo, were, by the aforesaid decree of October 26, 1942, restrained and prohibited from carrying out and enforcing the Florida Commercial Fertilizer Inspection Laws (Chapter 576, Laws of Florida, 1941).

SECOND.

Statutory Provisions Believed to Sustain Jurisdiction.

The statutory provisions believed to sustain the appellate jurisdiction of the Supreme Court of the United States and the direct appeal of this cause, are Sections 238 and 266 of the Judicial Code of the United States, as amended (28 U. S. C. A. Sections 345 and 380).

THIRD.

The Statutes of the State of Florida the Validity of Which Are Involved.

The statutes of the State of Florida the validity of which were involved in the above entitled cause, and which were

held, by the three judge district court, to be inapplicable to fertilizer and fertilizer materials brought into the State of Florida by the United States or its agencies and disposed of for use on, in or mixed with lands within the State of Florida not owned by or under the exclusive jurisdiction of the United States, because of constitutional grounds and the sovereignty of the United States, are the Florida Commercial Fertilizer Inspection Laws, the same being Chapter 576, Florida Statutes, 1941, the pertinent provisions of which are as follows:

(1) Section 576.03 provides as follows:

> "Every manufacturer or importer of, or agent for, the sale of commercial fertilizer within the state shall, previous to offering commercial fertilizer for sale in this state, and annually thereafter on or before July 1, and before offering for sale thereafter, file with the Commissioner of Agriculture a written statement giving the name of his principal agent or agents in the State of Florida, also the name and guaranteed analysis under oath of each brand of mixed fertilizer or fertilizer materials offered for sale by him, but he shall not be permitted to register any brand of mixed fertilizer of which the available primary plant food constitutes less than fourteen percent; * * *"

This section also provides that, on special permission granted by the Commissioner of Agriculture, on showing as set out therein, sale of fertilizer or fertilizer material of less than fourteen per cent available primary plant food may be made.

(2) Under Section 576.04, Florida Statutes, 1941, it is unlawful for any manufacturer, importer or agent for sale of commercial fertilizer to sell or make delivery of such commercial fertilizer before the registration thereof has been accepted by the Commissioner of Agriculture, as set out in Section 576.03, Florida Statutes, 1941.

(3) Under Section 576.05, Florida Statutes, 1941, every manufacturer (person engaged in the business of importing, preparing, mixing or manufacturing commercial fertilizer for sale either direct to consumers or by or through other media of distribution) shipping or delivering commercial fertilizer (fertilizer materials or mixed fertilizer) in lots of one or more tons, is required to notify the Commissioner of Agriculture on date of such shipment, giving the name and address of the consignee, point of destination, quantity and brand or brands, and if shipped by rail in carload lots, the number and initial of the car.

(4) Under Section 576.07, Florida Statutes, 1941, every package of commercial fertilizer (fertilizer materials or mixed fertilizer) manufactured, imported, transported, distributed, stored, kept or offered for sale or sold in or into the State of Florida is required to have securely attached a tag showing the name and brand of the fertilizer or fertilizer material, name and address of the manufacturer, the net weight of the package and other information fully described in Sections 576.08, 576.09 and 576.10, Florida Statutes, 1941, which information, among other things, requires data relative to plant foods and content of the material.

(5) Section 576.11, Florida Statutes, 1941, provides as follows:

> "Every manufacturer or agent for commercial fertilizer shall pay to the state treasurer a fee of twenty-five cents per ton for commercial fertilizer offered for sale in the State of Florida, except raw ground phosphate rock, soft phosphate, colloidal phosphate, phosphatic clays and all other untreated phosphatic materials, peat or humus, and hydrated lime and limestone when sold or used for agricultural purposes, on which materials the fee shall be ten cents per ton * * *."

(6) Under Section 576.12, Florida Statutes, 1941, stamps and labels furnished by the Commissioner of Agriculture are required to be attached to each package of fertilizer or fertilizer material sold or used in this state to evidence payment of the inspection fee required by Section 571.11, Florida Statutes, 1941.

(7) Section 576.13, Florida Statutes, 1941, provides as follows:

> "Each manufacturer and importer of or dealer in fertilizers, cotton seed meal, castor pomace, tobacco stems, tobacco dust or tobacco meal, shall forward the money for fertilizer stamps or labels with his letter of request, directed to the state treasurer. Said letter of request shall contain the statement of tons of fertilizers for which stamps or labels are required and the number of packages contained in each ton. The state treasurer shall hand to the commissioner the letter of request for fertilizer stamps or labels, which order shall be filled by the commissioner at once if found correct."

(8) Under Section 576.15, Florida Statutes, 1941, commercial fertilizers or fertilizer materials or mixed fertilizers imported into or sold in this state which do not have the tag, label and stamp attached as required by the Florida Commercial Fertilizer Law are forfeited to the State of Florida and becomes subject to seizure and sale by the sheriff of the county wherein found.

(9) Under Section 576.21, Florida Statutes, 1941, the Commissioner of Agriculture of this state is authorized to establish and from time to time amend or change such rules and regulations in regard to inspection, analysis and sale of fertilizer and fertilizer materials as in his judgment will best carry out the requirements of the Commercial Fertilizer Inspection Laws.

(10) By Section 576.01 (10) "manufacturer" is defined as follows:

> "'Manufacturer' means a person engaged in the business of importing, preparing, mixing, or manufacturing commercial fertilizer for sale, either direct to consumers or by or through other media of distribution, and the word 'manufacture' means preparation, mixing, or manufacturing."

(11) By Section 576.01 (13) "To import" is construed as follows:

> "'To import' and the word 'importing' shall be construed as meaning the bringing of commercial fertilizer into this state from any other state, territory or possession of the United States of America, or from any foreign country, for sale within this state, and the word 'importer' shall be construed as meaning the person who brings in commercial fertilizer from any other state, territory or possession of the United States of America, or from any foreign country, for sale within this state."

FOURTH.

Date of Decree Appealed From and Date of Appeal.

The date of the decree appealed from and sought to be reviewed on direct appeal herein is October 26, 1942, and the date upon which the application for appeal herein is presented is January 13, 1943.

FIFTH.

Nature of the Case and Rulings of the Court Bringing the Case Within the Jurisdictional Provisions Relied Upon.

The United States of America, on to-wit September 19, 1942, filed its complaint in the United States District Court, for the Northern District of Florida, against these defend-

ants praying interlocutory and final injunction against them enjoining and prohibiting them from making inspection of or otherwise enforcing the Florida Commercial Fertilizer Inspection Laws against the commercial fertilizer and fertilizer materials brought or shipped into the State of Florida from other states, by, at the direction of or under the authority of the United States, for use in, on or mixed with lands within the State of Florida not owned or under the exclusive jurisdiction of the United States. The United States, in and by its said complaint, alleges and contends that:

(a) The distribution of fertilizer and fertilizer materials under the Soil Conservation and Domestic Allotment Act of the United States is a sovereign function, and that the inspection of said fertilizer and fertilizer materials and the enforcement of the Florida Commercial Fertilizer Inspection Laws against such fertilizer and fertilizer materials constitute an interference and obstruction of said sovereign function of the United States; and

(b) The Florida Commercial Fertilizer Inspection Laws and their enforcement against fertilizer and fertilizer materials shipped or brought into the State of Florida for the uses and purposes aforesaid, violate Article VI, Clause 2 of the Constitution of the United States and conflict with the Soil Conservation and Domestic Allotment Act of Congress of the United States and are to that extent unconstitutional and void.

These defendants, on to-wit October 23, 1942, filed their answer and counter-claim for declaratory relief to the said complaint, in and by which they alleged and contend that:

(a) The Florida Commercial Fertilizer Inspection Laws are constitutional and applicable to fertilizer and

fertilizer materials shipped or brought into the State of Florida for the uses and purposes aforesaid;

(b) The said Florida Commercial Fertilizer Inspection Laws do not conflict with or violate any provision of the constitution of the United States or with the valid provisions of any act of the Congress of the United States;

(c) The enforcement of said Florida Commercial Fertilizer Inspection Laws against fertilizer and fertilizer materials shipped or brought into the State of Florida for the uses and purposes aforesaid, violate no sovereign function of the United States;

(d) The said Florida Commercial Fertilizer Inspection Laws constitute a valid exercise of one of the sovereign functions of police powers reserved to the states under and by virtue of the constitution of the United States and the 10th amendment thereto;

(e) The Soil Conservation and Domestic Allotment Act, and other statutes mentioned in the complaint, form a statutory plan to regulate and control agricultural production, a matter beyond the powers delegated to the federal government by the constitution of the United States; and

(f) The proceeding is one to enjoin, suspend or restrain the enforcement of rules, regulations or orders issued by the Commissioner of Agriculture of the State of Florida, acting as an administrative board or commission for the enforcement of the Florida Commercial Fertilizer Inspection Laws of the State of Florida, and to enjoin, suspend or restrain the collection of an inspection fee or tax imposed by the Florida Commercial Fertilizer Inspection Laws pursuant to said laws

when a plain, speedy and efficient remedy may be had at law or equity in the courts of the State of Florida.

The main and controlling questions presented by the pleadings aforesaid are:

(a) The constitutionality or unconstitutionality of the Florida Commercial Fertilizer Inspection Laws insofar as they may be applied to fertilizer and fertilizer materials brought or shipped into the State of Florida from other states, by, at the direction of or under the authority of the United States for use in, on or mixed with lands within the State of Florida not owned by or under the exclusive jurisdiction of the United States;

(b) Whether or not the United States is invading the powers reserved to the states under the constitution of the United States by bringing or shipping fertilizer or fertilizer materials into the state aforesaid without inspection;

(c) The extent of the police powers of the states under the constitution of the United States;

(d) The rights of the several states to protect their own rights and the rights of their people against damage due to the use of inferior or improper fertilizer and fertilizer materials brought into the states by the United States or under its authority.

The issue is one of the extent of the police powers of the states and the sovereign powers of the United States; where does the police powers of the states cease and the sovereign powers of the United States begin. The extent of the operation of the Florida Commercial Fertilizer Inspection Laws depends upon a determination of the extent of the police powers of the states as against the sovereign powers of the United States. These issues seem to clearly bring the case squarely within the purview of Sections 238 and

266 of the Judicial Code of the United States (28 U. S. C. A. Sections 345 and 380) which permit a direct appeal from the district courts to the Supreme Court of the United States from interlocutory and final decrees suspending or restraining the enforcement or execution of state statutes by state officers or the enforcement or execution of orders made by administrative boards or commissions pursuant to state statutes.

SIXTH

Grounds Upon Which It Is Contended That the Questions Involved Are Substantial.

The questions involved in this appeal are substantial in character in that they involve the question of the extent of states' rights and police powers and determine the extent of the powers of the several states to make an inspection of fertilizer and fertilizer materials brought or shipped into states, by or under the direction of the United States, for use upon lands under the jurisdiction of such states. A determination of the questions involved in this appeal will also be a substantial determination of the question of the rights of the states to inspect seeds, plants, bulbs, nursery stock and many other things that are or may be brought or shipped into the states under like circumstances. The question also involves the extent of the sovereign powers of the United States as against the rights and powers of the states to make inspection of the matters aforesaid. The questions are substantial questions of states' rights. The questions involved have not heretofore been determined by the Supreme Court of the United States.

SEVENTH

Copies of Opinions On Rendition of the Judgment.

The following opinions and findings of fact and conclusions of law were filed in the cause by the members of the

three judge court which tried the cause and rendered the judgment therein and the following judgment was entered therein, to-wit:

(a) District Judge Long on October 30, 1942 filed an opinion in the cause, the same being in words and figures as will more fully appear by reference to a true and correct copy attached hereto as Exhibit "A" and made a part hereof by reference;

(b) District Judge Walter on October 28, 1942 filed his dissenting opinion in the cause, the same being in words and figures as will more fully appear by reference to a true and correct copy hereto attached as Exhibit "B" and made a part hereof by reference;

(c) The District Court, composed of three judges, on October 26, 1942 filed its findings of fact and conclusions of law, the same being in words and figures as will fully appear by reference to a true and correct copy hereto attached as Exhibit "C" and made a part hereof by reference;

(d) The said District Court, on October 26, 1942, made and entered its final decree, the same being in words and figures as will fully appear by reference to a true and correct copy thereof hereto attached as Exhibit "D" and made a part hereof by reference.

EIGHTH

Cases Believed to Sustain Jurisdiction.

Frank Eicholz v. *Public Service Commission of the State of Missouri,* 306 U. S. 268, 83 L. Ed. 641;

Driscoll v. *Edison Power & Light Co.,* 307 U. S. 104, 83 L. Ed. 1134, 59 S. Ct. 715;

Pullman Company v. *Railroad Commission of Texas,* 33 F. Supp. 675, reversed in 312 U. S. 496, 61 S. Ct. 643, 85 L. Ed. 971;

Brucker v. *Fisher,* 49 F. (2d) 759;

Smith v. *Wilson,* 273 U. S. 388, 71 L. Ed. 699, 47 S. Ct. 385;

J. Smylie Harkness v. *Valentine K. Irion, Commissioner,* 278 U. S. 92, 73 L. Ed. 199;

Mayo v. *Lakeland Highlands Canning Co.,* 309 U. S. 310, 84 L. Ed. 774, 60 S. Ct. 516;

Oklahoma Natural Gas Co. v. *Campbell Russell, et al., constituting Corporation Commission of the State of Oklahoma,* 261 U. S. 290, 67 L. Ed. 659, 43 S. Ct. 353;

Durrant v. *Bennett,* 54 F. (2d) 634.

Respectfully submitted,

J. Tom Watson,
Attorney General of Florida;
James H. Millican, Jr.,
Assistant Attorney General of Florida;
Fred M. Burns,
Assistant Attorney General of Florida;
H. E. Carter,
Wm. C. Pierce,
Attorneys for the Above Defendants.

EXHIBIT "A".

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF FLORIDA.

Civil Action GCA-31.

UNITED STATES OF AMERICA, *Plaintiff*,

vs.

NATHAN MAYO, ET AL., *Defendants*.

Attorneys for Plaintiff:

Francis M. Shea, Assistant Attorney General; George Earl Hoffman, United States Attorney; William B. Watson, Jr., Assistant United States Attorney.

Sidney J. Kaplan, Special Assistant to the Attorney General; Martin Norr, Attorney, Department of Justice.

Attorneys for Defendants:

J. Tom Watson, Attorney General of Florida.
Fred M. Burns, Assistant Attorney General of Florida.
H. E. Carter, of Tallahassee, Florida.
William C. Pierce, of Tampa, Florida.

Before McCord, Circuit Judge, and Long and Waller, District Judges.

LONG, *District Judge:*

The United States is engaged in the distribution of fertilizer to the farmers of Florida and in other States as a part of a soil conserving program developed by the government to carry out the purposes of the Soil Conservation and Domestic Allotment Act. The outline of the program is set out in the complaint filed herein, and the attached affidavits. The fertilizer is purchased by the government from commercial manufacturers, inspected by the government as to suitability for the purpose for which it is to be used. It is then shipped under government bills-of-lading

to county agricultural conservation associations for the purpose of delivery to the farmers. This distribution is for the purpose of facilitating the planting of such nitrogen-bearing crops as would increase the nitrogen content of the soil and thereby compensate for the critical shortage of nitrogen due to its use in munitions required by the war emergency.

Nitrogen, being unavailable for fertilizer purposes, can only be supplied by these nitrogen growing crops. It, therefore, becomes a question of either the diversion of nitrogen from war needs, or a reduction of the agricultural production, both of which are necessary because of these requirements of the armed forces, the needs of our allies, and the domestic demands. The program is nation wide. The action of the defendants complained of prior to the issuance of the temporary restraining order, had halted the distribution of this very widely needed fertilizer.

The Florida Commercial Fertilizer Law, Section 576.11, requires an inspection fee to be paid by every manufacturer or agent of commercial fertilizer. Section 576.13 refers to manufacturer and importer of, or dealer in fertilizers. Since the rule is that the general words of a statute do not include the government or affect its rights unless the construction be clear and undisputable upon the text of the act (Nardone *v.* United States, 302 U. S. 379; United States *v.* Fox. 94 U. S. 315; United States *v.* Cooper Corporation, 312 U. S. 600), the conclusion could be reached that by this statute of Florida the legislature had no intention of affecting the property of the Federal Government.

There is abundant authority for the holding that a State under the exercise of the police power may pass regulatory acts providing for inspection fees, but that is not the question here. The one and only question to be determined is whether or not Federal transactions are immune from such State regulations. It seems to be well settled as a matter of law that the police power of a State does not extend to the United States, its property or transactions, and that such Federal property and transactions are immune from State regulations, and State statutes are invalid under the Supremacy Clause of the Constitution (Article VI, Clause 2).

Ohio *v.* Thomas, 173 U. S. 276 (cited with approval in Stewart & Company *v.* Sadrakula, 309 U. S. 94) Arizona *v.* California, 283 U. S. 423, the United States may perform its functions without conforming to the police regulations of a State. Johnson *v.* Maryland, 254 U. S. 51; Hunt *v.* United States, 278 U. S. 96; Johnson *v.* Maryland, 254 U. S. 51; Chalk *v.* United States, 114 F. (2d) 207 (C. C. A. 4th) 213 U. S. 679; Posey *v.* Tennessee Valley Authority, 93 F. (2d) 726 (C. C. A. 5th);

The authority of State laws or their administration may not interfere with the carrying out of a national purpose. Where enforcement of the State law would handicap efforts to carry out the plans of the United States, the State enactment must, of course, give way. Stewart & Company *v.* Sadrukula, 309 U. S. 94.

The defendants rely chiefly upon the case, State of Alabama *v.* King & Boozer, 314 U. S. 1.

All that is necessary to convince one that the King & Boozer case is not applicable here is to parallel this case with the case of Federal Land Bank *v.* Bismarck Lumber Company, 314 U. S. 95, rendered the same day as the King & Boozer case. In King & Boozer the State law operated only on the private independent contractor and with respect to its own property. In the Federal Land Bank case, which as stated above was rendered the same day as the case relied upon by the defendants, the State of North Dakota sought to impose its sales tax from a dealer directly to the Federal agent and instrumentality. The incident of the tax was, by compulsion of the State law rather than by contract, directly on the purchaser who in that instance was a Federal instrumentality. The Supreme Court accordingly held the levy invalid as in violation of a sovereign immunity of the Federal Government. The Florida statute here involved, as applied by the defendants, operates directly on the United States, and it would seem that the case of Federal Land Bank *v.* Bismarck Lumber Company is controlling in this instance. The Florida act is legislation for the regulation of the fertilizer industry, and not legislation for raising revenue, and the fees required are only one aspect of a total scheme of regulation which cannot be validly applied to the

United States, its property or transactions. The property of the United States is immune from seizure, even to collect a valid tax, and certainly this Federal property is immune from State seizure in the case at bar even to collect a valid fee.

This the 30th day of October, A. D. 1942.

(S.) AUGUSTINE V. LONG,
United States District Judge.

EXHIBIT "B".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

Civil Action GCA-31.

UNITED STATES OF AMERICA, *Plaintiff*,

vs.

NATHAN MAYO, et al., *Defendants.*

Dissenting Opinion by District Judge Waller.

The Florida Fertilizer Inspection Statute is a valid exercise of the police power of the State to protect the farmers against the sale of inferior or fraudulent fertilizer.

The Federal Government has enacted no statute for the protection of the purchasers of fertilizer in Florida. Under the Constitution all power not granted to the Federal Government was reserved to the States. Moreover, the power of the State to levy a reasonable inspection fee is expressly provided in Section 10 of Article I:

> "No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, *except what may be absolutely necessary for executing it's* inspection Laws: * * *" (Italics supplied.)

The right of the State to levy an inspection tax is not merely implied but expressly conferred by the Constitution.

The Congress could not take the power away from the State to levy a reasonable inspection tax. If Congress cannot do so, it follows that the Department of Agriculture cannot do so.

The State is supreme and sovereign in the exercise of its reserved powers. The right to levy an inspection tax is expressly reserved in the State. Therefore, the State is supreme in the exercise of this power.

Congress is supreme in the powers delegated to it, but the right to regulate the inspection of fertilizer or to regulate agriculture was not expressly delegated to the Congress. Whatever power Congress has to regulate agriculture is under the general welfare clause of the Constitution, but the promotion of the general welfare does not call for the striking down of a constitutional power of a State. It is more important that the relations between the State and Federal Governments under our dual system be preserved and left uninfringed than refraining from deducting from a gift to the farmer a reasonable inspection fee levied by the State under the power of the Federal Constitution.

I agree with the majority Court that the State was probably without power to seize property of the United States, to wit, the fertilizer in question, but I consider the seizure as purely procedural. The substantive question is whether or not the Department of Agriculture has the right to procure fertilizer for farmers and thereby permit them to escape the payment of an inspection tax, whereas the vast majority of farmers who are not the recipients of this gratuity will have to pay an inspection tax. It is idle to say that this inspection fee is a burden upon the Federal Government for the reason that since it is a gratuity the Government can, without loss to itself, deduct the amount of the inspection tax from the amount of the benefit to be paid to the farmer, of which the fertilizer distribution is but an advancement.

I do not consider that the inspection fee is a tax, but if it be a tax it is a non-discriminatory tax and compels no burden to be cast upon the Federal Government.

If it be a tax there is no implication that Congress intended to grant immunity from the payment of the tax. There is no immunity from taxation granted in the Fed-

eral Constitution. Immunity proceeds only from the express language of a statute or implications therein. An implied immunity can only be ascertained from the intention of Congress and the nature and effect of the burden placed upon the Government. See Graves *vs.* New York, Ex Rel O'Keefe, 306 U. S. 468; State of Alabama *vs.* King & Boozer, 314 U. S. 1; Curry *vs.* United States, 314 U. S. 14.

In the case of Graves *vs.* New York, Ex Rel O'Keefe, supra, the Court, referring to the decision in the case of Helvering *vs.* Gerhardt, 304 U. S. 405, said:

> "* * * it was there pointed out that the implied immunity of one government and its agencies from taxation by the other *should,* as a principle of constitutional construction, *be narrowly restricted.* For the expansion of the immunity of the one government correspondingly curtails the sovereign power of the other to tax, * * * " (Underscoring supplied.)

It seems to me that in view of the power of the State expressly conferred by the Federal Constitution to levy an inspection tax, it could not be implied in the absence of express language in the statute, that Congress intended to exempt the fertilizer in question from the provisions of the valid inspection statute of the State of Florida.

Entertaining the above views I am forced to dissent from the findings of fact and conclusions of law of the majority of the Court.

October 28, 1942.

CURTIS L. WALLER,
United States District Judge.

EXHIBIT "C".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

Civil Action GCA-31.

UNITED STATES OF AMERICA, *Plaintiff*,

v.

NATHAN MAYO, ET AL., *Defendants*.

Findings of Fact and Conclusions of Law.

This cause having come on to be heard on plaintiff's application for a preliminary injunction, and at the hearing thereof plaintiff having made formal oral motion for summary judgment in its favor on all the pleadings and affidavits filed herein, and the ten days notice requirement for said motion for summary judgment having been waived by written stipulation, the Court hereby files its findings of fact and conclusions of law as follows:

The Court Finds:

1. This is a civil action brought by the United States of America as plaintiff, of which this Court has jurisdiction under Section 24 (1) of the Judicial Code, as amended (28 U. S. C. Section 41 (1)). This action is brought by direction of the Attorney General.

2. The defendant Nathan Mayo is a resident, citizen, and inhabitant of the State of Florida and of the Northern District thereof. He is the Commissioner of Agriculture of the State of Florida. The defendant, Roy Hutchinson, is an Inspector in the Florida State Department of Agriculture, Inspection Bureau. He is a resident, citizen, and inhabitant of the State of Florida and the Northern District thereof.

3. The United States of America is engaged in the distribution of fertilizer in the State of Florida. This distribution is part of a soil conservation program of the

United States designed to preserve and improve the fertility of the soil of the United States and to accomplish the other purposes enumerated in Section 7 of the Soil Conservation and Domestic Allotment Act (16 U. S. C., Sec. 590g) under the authority of which and of other Federal statutes said program is being carried on. Such distribution is necessary as a part of such program. The particulars of this program are set forth in the affidavit of Joseph L. Orr, sworn to September 17, 1942, filed herein. The Court finds the facts to be as stated in the affidavits of Joseph L. Orr, sworn to September 17, 1942, William G. Finn (No. 1) sworn to October 17, 1942, William G. Finn (No. 2) sworn to October 17, 1942, Fred B. Northrup, sworn to October 19, 1942, Fred B. Northrup, sworn to October 23, 1942, filed herein and said affidavits are hereby incorporated by reference in this finding. Certain superphosphate fertilizer involved in said program is now in the State of Florida and is owned by the United States. As part of the said program, superphosphate fertilizer is being distributed in the State of Florida to facilitate the planting therein, not later than on or about October 15, 1942, of certain soil conserving crops, notably winter legumes, and of certain other crops continuously thereafter, designed to increase the nitrogen content of the soil and thereby to compensate for the shortage for fertilizer purposes of chemical nitrogen due to its use in munitions required by the existing war emergency. If nitrogen is supplied in this way it will leave available for war purposes nitrogen which otherwise would have to be used for agricultural purposes unless there is to be a corresponding decrease in the production of agricultural products. It was necessary that part of said program proceed without delay to permit completion of the distribution of said superphosphate fertilizer prior to October 15, 1942, and that the rest of said program proceed continuously and with all dispatch thereafter. The carrying out of the said program is a part of the sovereign functions of the United States for governmental purposes.

4. Under the purported authority of the Florida Commercial Fertilizer Law, the defendants are interfering with and obstructing and threatening to interfere with and ob-

struct the United States in its exercise of its sovereign functions as aforesaid in carrying out its program for the distribution of fertilizer in the State of Florida.

5. Said interference and obstruction consists of the issuance of and threats to enforce "stop sales notices" prohibiting the distribution of said fertilizer in the State of Florida and seizures of and threats to seize and sell at public sale all fertilizer, the property of the United States, shipped into the State of Florida. Said Florida Commercial Fertilizer Law, and any other statutes on which defendants purport to rely, may not be construed and were not intended to apply to property of and transactions by the United States of America, but if so construed said statutes are unconstitutional, in violation of the Constitution of the United States, and beyond the power of the State of Florida. As so construed said statutes violate Article VI, Clause 2 (the supremacy Clause) of the Constitution of the United States and conflict with the acts of Congress providing for the aforesaid soil conservation program and for the functioning and carrying out thereof and for the functioning of the Department of Agriculture of the United States and for the acquisition and disposition of the fertilizer here involved.

6. Said "stop-sale notices" and seizures are wholly void. The purported ground on which said orders have been issued and said seizures and threats made is that provisions of the said Florida Commercial Fertilizer Law have not been complied with. Said provisions may not be construed to apply to the fertilizer and the program for its distribution herein involved and if so construed would violate Article VI, Clause 2, of the Constitution of the United States and conflict with the Acts of Congress referred to in the foregoing paragraph of these findings.

7. The United States and its property and transactions, under the Constitution of the United States, are immune from the Florida Commercial Fertilizer Law and any other statutes on which defendants purport to rely, as well as outside their intended scope, and the police power of the State of Florida under which such legislation was enacted does

not under the Constitution of the United States extend to the United States or to its property and transactions.

8. Notwithstanding the foregoing defendants have issued such "stop sale notices" as aforesaid and are enforcing and threatening to enforce the same, and are also threatening to seize and sell at public sale, in purported compliance with the Florida Commercial Fertilizer Law and other statutes all fertilizer, the property of the United States, shipped into the State of Florida.

Numerous persons utilized by the United States acting on its behalf in the execution of its program for the distribution of said fertilizer in the State of Florida are fearful of the said "stop sale notices" and seizures and threats and unless the enforcement of the "stop sale notices" and the seizures and the carrying out of the said threats be enjoined, said persons will decline to execute the laws of the United States and the carrying out of the program of the United States will be frustrated.

9. The United States of America is, and at all times hereinafter referred to was, the owner of and entitled to the immediate and undisturbed possession of a certain lot of 19% superphosphate fertilizer, consisting of 54.15 tons, more or less. Said lot of fertilizer is part of the fertilizer being distributed in the State of Florida as more fully described in paragraph 3 hereof.

10. The United States of America became the owner thereof by purchase pursuant to a certain contract, No. Als-26963, entered into by the United States, through its Department of Agriculture, with Mutual Fertilizer Company, Savannah, Georgia, for the furnishing to the United States by said Company of 1,500 tons of said fertilizer. By direction of the United States and in the execution of its program more fully described above, said property was being shipped from Savannah, Georgia, to Monticello, Florida, via the Seaboard Air Line, consigned to Jefferson County Agricultural Conservation Association, an instrumentality and agency of the United States and acting on its behalf. Said Shipment was under Government Bill of Lading No. 2621276, in which the said Seaboard Air Line acknowledged

receipt of said fertilizer, therein described and referred to in the language of said Government Bill of Lading as "the public property hereinafter described."

11. On September 10, 1942, the following telegram was sent by defendant Nathan Mayo to the Administrative Officer of the said Jefferson County Agricultural Conservation Association:

September 10, 1942.

FRANKLIN W. SMITH, Administrative Officer,
Jefferson County Agricultural Association,
Monticello, Florida.

This is your official notice that car of superphosphate consigned to you by Mutual Fertilizer Company, Savannah, Georgia, is under legal stop sale notice as provided by Florida Fertilizer Law account not being registered and tagged. Am wiring manufacture to arrange registration and tagging immediately so goods may be released.

NATHAN MAYO
Commissioner of Agriculture.

Charge to Inspection Bureau.
RUSH

On September 11, 1942, defendant Roy Hutchinson issued a "stop sale notice," directing Franklin W. Smith, Administrative Officer of the Jefferson County Agricultural Conservation Association, as aforesaid an instrumentality and agency of the United States and acting on its behalf, to withdraw from "sale" and hold subject to further instructions the said lot of superphosphate fertilizer. Said "stop sale notice" is one of the "stop sale notices" referred to and more fully described in paragraphs 5, 6, and 8 hereof.

12. The United States of America is, and at all times hereinafter referred to was, the owner of and entitled to the immediate possession of three certain lots of 20% superphosphate fertilizer consisting of 50 tons each, more or less. Said lots of fertilizer are part of the fertilizer being distributed in the State of Florida as more fully described in paragraph 3 hereof.

13. The United States of America became the owner thereof by purchase pursuant to a certain contract, No. Als-27003, entered into by the United States, through its Department of Agriculture, with Georgia Fertilizer Company, Valdosta, Georgia, for the furnishing to the United States by said Company of 5,000 tons of said fertilizer. By direction of the United States said lots were being shipped by rail from Valdosta, Georgia, consigned respectively to the Agricultural Conservation Association of Walton County, Florida; Gadsden County, Florida; and Madison County, Florida at their respective offices in DeFuniak Springs, Florida; Quincy, Florida; and Madison, Florida. Each of the three said County Agricultural Conservation Associations are instrumentalities and agencies of the United States acting on its behalf. Each of the three said shipments was under a Government Bill of Lading like that referred to and described in paragraph 10 hereof and each was described therein and referred to as "the public property hereinafter described."

14. On or about September 11, 1942, defendant Nathan Mayo, and his subordinates, purporting to act as inspectors of the Florida State Department of Agriculture, Inspection Bureau, under the purported authority of the Florida Commercial Fertilizer Law issue "stop sale notices" directing that the three said lots be withdrawn from "sale" and held subject to further instructions. These "stop sale notices" are among the "stop sale notices" referred to and more fully described in paragraphs 5, 6, and 8 hereof.

15. In the carrying out of the program of the United States time is of the essence, due to the fact that the planting season in the State of Florida for certain soil conserving crops with which the superphosphate fertilizer herein referred to was to be used would expire on or about October 15, 1942, and due to the continuing and persistent need therefor on other crops as shown in the affidavit of William G. Finn (No. 1), sworn to October 17, 1942, and due to the acute necessity for obtaining nitrogen from the said crops to replace chemical nitrogen unavailable for fertilizer purposes due to its use in munitions required by the existing war emergency. The threatened injury to the United States

is imminent and irreparable, and the United States has no adequate remedy at law nor any remedy save injunction by this court.

The Court files the following conclusions of law:

1. The Court has jurisdiction of the subject matter and parties to plaintiff's complaint, but not of the defendant's counterclaim.

2. Apart from plaintiff's right to a final judgment as a matter of law, plaintiff is entitled to a preliminary injunction continuing in effect the terms of the temporary restraining order.

3. There is no genuine issue as to any material fact and plaintiff is entitled to judgment as a matter of law as prayed in the complaint.

4. The motion of defendants to dismiss the complaint should be denied.

5. The motion of plaintiff to dismiss the counterclaim for want of jurisdiction should be granted, and the defendants' motion to add parties should accordingly be denied.

6. The property and transactions of the United States and its agencies referred to in the findings of Fact are under the Constitution of the United States immune from and not subject to the application of the Florida Commercial Fertilizer Law relied on by defendants.

7. The application by defendants of the Florida Commercial Fertilizer Law to the property and transactions of the United States as described in the Findings of Fact is in violation of the Constitution of the United States, and beyond the power of the defendants as officers of the State of Florida.

8. The distribution of the fertilizer and fertilizer materials by the United States and its agencies as described in the Findings of Fact is, under the Constitution of the United States, immune from the fertilizer inspection, analysis, control and fee requirements of the Florida Commercial Fertilizer Law.

9. The legal defenses set forth in defendants' answer should each be overruled.

Let the foregoing Findings of Fact and Conclusions of Law be filed, and judgment be entered accordingly.

Dated October 26, 1942.

(S.) (LEON MCCORD,
United States Circuit Judge.
(S.) AUGUSTINE V. LONG,
United States District Judge.

Dissenting:

(S.) CURTIS L. WALLER,
United States District Judge.

EXHIBIT "D".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

Civil Action GCA-31.

UNITED STATES OF AMERICA, *Plaintiff,*

v.

NATHAN MAYO, et al., *Defendants.*

Order On Motions and Final Decree.

This cause came on to be heard and was argued by counsel and on consideration thereof, the Court having filed its Findings of Fact and Conclusions of Law, it is

Ordered, Adjudged and Decreed as follows:

1. The motion of defendants to dismiss the complaint is denied.

2. The motion of plaintiff to dismiss the counterclaim for want of jurisdiction is granted; and defendant's motion to add parties is accordingly denied.

3. The application of plaintiff for a preliminary injunction is granted.

4. The motion of plaintiff for summary judgment enjoining the defendants as prayed in the complaint and for a

final permanent injunction in the terms of the temporary restraining order heretofore issued is granted.

And it is Further Ordered, Adjudged and Decreed as follows:

5. The defendants above named and each of them, their officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with them are hereby permanently enjoined from: Taking any steps to enforce "stop sale notices" issued under the Florida Commercial Fertilizer Law relating to fertilizer sought to be distributed by or on behalf of the United States or persons acting on its behalf, or to apply the provisions of the Florida Commercial Fertilizer Law to the United States, any of its property or transactions or any persons engaged in its behalf in carrying on its program for the distribution of fertilizer and from threatening to take such steps, and from cancelling the right to do business of any fertilizer company by reason of any transaction with the United States, and from interfering, impairing, or obstructing in any way the program of the United States with respect to the distribution of fertilizer.

6. The defendants are hereby required to vacate and set aside the "stop sale notices" and seizures which are the subject matter of this action.

7. The Court reserves jurisdiction of this cause and of the parties for the purpose of enforcement of this decree and for the granting of such further relief as may be appropriate.

Dated October 26, 1942.

(S.) LEON MCCORD,
United States Circuit Judge.
(S.) AUGUSTINE V. LONG,
United States District Judge.

Dissenting:

(S.) CURTIS L. WALLER,
United States District Judge.

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